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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,363	01/30/2004	Eduardo Jimenez	IR 7433-01	6548
23909	7590	10/15/2007		
COLGATE-PALMOLIVE COMPANY			EXAMINER	
909 RIVER ROAD			GUIDOTTI, LAURA COLE	
PISCATAWAY, NJ 08855			ART UNIT	PAPER NUMBER
			3723	
			MAIL DATE	DELIVERY MODE
			10/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/768,363

Applicant(s)

JIMENEZ ET AL.

Examiner

Laura C. Guidotti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-43,45 and 46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-43,45 and 46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 37-43 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shekalim, US 5,689,850 in view of Porat et al., US 5,528,786.

Shekalim discloses a power toothbrush comprising a handle (12), a cleaning head attached to the handle (2, 6), a power source of batteries (36), an electrical motor (30), and a mechanical vibratory device (32; Column 3 Lines 24-34), the motor and the vibratory device disposed in the handle (as shown in Figure 1), the cleaning head (2) having a plurality of cleaning/treating elements (6). Shekalim does not disclose that the plurality cleaning/treating elements have characteristics that differ from other

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cleaning/treating elements. However, Shekalim teaches a powered device that accepts conventional toothbrushes (2) so that there is a greater variety of toothbrushes available to a user, that the user may replace a toothbrushing surface as needed, and an interchangeable head so that more than one user can use the powered portion of the device (Column 4 Lines 1-7).

Porat et al. teaches a toothbrush having a head that comprises a first end adjacent a handle (portion adjacent "40", Figure 3b) and a free end (rightmost end shown in Figure 3b) includes a first cleaning/treating element adjacent the first end that is non-movable relative to the first end (the first cleaning/treating element is the bristle array 52 that is adjacent 40, see Figures 3a-4), a second cleaning/treating element adjacent the free end that is non-movable relative to the free end (bristle array 52 that is farthest from 40, see Figures 3a-4), and a plurality of third cleaning/treating elements disposed between first and second cleaning/treating elements (bristle arrays 58, each array 58 is considered each third cleaning element), wherein each of the plurality of third cleaning/treating elements extends from one of a plurality of support structures (57) having at least a portion that is rotatably movable relative to the cleaning head about a vertical axis extending upwardly from said one of a plurality of support structures (when 41 is oriented vertically, a vertical axis extends upwardly from support 57 along hinge 61 about which support structure 57 rotates, Figure 4; Column 4 Lines 41-50), and wherein each of the plurality of third cleaning/treating elements is movable independent of any other third cleaning/treating element (Figure 4 shows that each cleaning/treating element "58" rotates freely in a channel about hinge 61 and therefore

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has independent motion), and further comprising a plurality of channels (54), each of the channels extending transversely and substantially completely across a surface of the cleaning head from which the cleaning/treating elements extend (channels are 54, and extend in a transverse direction across a surface as best shown in Figure 4) and separating a support structure from one of an adjacent support structure, the free end, or the first end (as 54 separate a support structure 57 from another support structure 57, the free end, and the first end, see Figure 4). The support structure is capable of enabling angular movement of the third cleaning/treating elements relative to the cleaning head (see Figures 3a-3b). The first and second cleaning elements are bristle tufts (52). The plurality of third cleaning/treating elements that are disposed between the first and second cleaning/treating elements (see Figures) include bristle tufts (58). The cleaning head further comprises at least two cleaning/treating elements having different cross sections (since cleaning elements 52 and 58 can be of different heights, they would have different cross sections, Column 5 Lines 7-10). Also, at least one of the cleaning/treating elements extends further from the cleaning head than at least one other of the cleaning/treating elements (see Figures 3a-4; Column 5 Lines 7-10). The second cleaning/treating element includes a tuft that follows at least a portion of a contour of the free end of the cleaning head (the rightmost cleaning element marked "52" as shown in Figures 3a-4 follows "at least a portion" of the contour of the free end). Porat et al. provide these third elements (58) so that while a user moves the handle along its longitudinal axis the first and second cleaning elements (52) remain in place in

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functional contact with the teeth and the third cleaning elements will rock back and forth in order to effectively clean tooth surfaces (Column 4 Line 59 to Column 5 Line 6).

It would have been obvious for one of ordinary skill in the art to substitute the conventional toothbrush head within device of Shekalim with a manual toothbrush that includes a brush head having three cleaning/treating elements, as Porat et al. teach, in order to provide cleaning elements that rock back and forth in order to effectively clean tooth surfaces.

Response to Arguments

2. Applicant's arguments filed 03 August 2007 have been fully considered but they are not persuasive.

The Applicant contends that neither Shekalim nor Porat teach or disclose the invention as recited in claim 37, in particular that there must be "third cleaning/treating elements extends from one of a plurality of support structures having at least a portion that is rotatably movable relative to the cleaning head about a vertical axis extending upwardly from said one of a plurality of support structures." The Applicant further points out that "bristle array 58 rocks about a longitudinal axis of the handle, about hinge 61." However, the Examiner points out that the claims do not define "vertical" or "upwardly" and that Porat does in fact show that if 41 is oriented vertically, a vertical axis extends upwardly from support 57 along hinge 61 about which support structure 57 rotates, and thus when positioned upright in that manner the bristle array 58 on support structure 57 is rotatably movable relative to the cleaning head about a vertical axis along hinge 61 extending upwardly from one of the plurality of support structures.

The Applicant further contends that the combination of references teach away from the claimed invention. The Examiner respectfully disagrees with this assertion and does not understand how Porat would teach away from Shekalim. One of ordinary skill in the art would recognize that the combination of Shekalim and Porat would be successful and would increase the number of directions of which the cleaning/treating elements are capable of cleaning at a time, and it would be obvious to try this because by increasing the directions of which the bristles can rotate about would increase the likelihood that the cleaning/treating elements would be able to access awkward angles and cavities found in the rear of an oral cavity.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

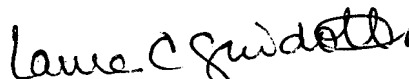
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-

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1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Laura C Guidotti
Patent Examiner
Art Unit 3723

lcg